

The Senate Banking and Financial Institutions Committee offered the following substitute to HB 1238:

A BILL TO BE ENTITLED

AN ACT

To amend Part 5 of Article 3 of Chapter 12 of Title 44 of the Official Code of Georgia Annotated, relating to pawnbrokers, so as to define terms; to require registration with the Governor's Office of Consumer Affairs; to provide for notification of repossession of a motor vehicle; to provide for redemption of the motor vehicle; to provide for a commercially reasonable sale; to provide for a return of surplus from the sale to the pledgor; to require a mandatory principal payment in certain situations; to provide for additional disclosures on motor vehicle title pawn tickets; to provide procedures for military members and their spouses; to provide for related matters; to provide for severability; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Part 5 of Article 3 of Chapter 12 of Title 44 of the Official Code of Georgia Annotated, relating to pawnbrokers, is amended by inserting new paragraphs (1.1) and (1.2) in Code Section 44-12-130, relating to definitions relevant to pawnbrokers, to read as follows:

"(1.1) 'Motor vehicle title pawn' or 'title pawn' means a pawn transaction wherein the pawnbroker maintains possession of a motor vehicle certificate of title, and not the actual motor vehicle, pursuant to paragraph (5) of this Code section.

(1.2) 'Motor vehicle title pawn agreement' means a written agreement evidencing a motor vehicle title pawn."

**SECTION 2.**

Said part is amended by inserting a new Code Section 44-12-130.1 immediately following Code Section 44-12-130, relating to definitions relevant to pawnbrokers, to read as follows:

"44-12-130.1.

Any business that offers or makes motor vehicle title pawns shall be required to register with the Governor's Office of Consumer Affairs. Such registration shall disclose the name of the business, the name of the person or entity owning the business, the number of repossessions of motor vehicles the business initiated in the previous year, and the address of all locations operating within the State of Georgia. A reasonable fee for registration shall be established by the Governor's Office of Consumer Affairs. The registration shall be renewed every year."

### SECTION 3.

Said part is further amended by striking Code Section 44-12-131, relating to pawn transactions, in its entirety and inserting in its place the following:

"44-12-131.

(a)(1) All pawn transactions shall be for 30 day periods but may be extended or continued for additional 30 day periods.

(2) A pawnbroker shall not lease back to the seller or pledgor any motor vehicle during a pawn transaction or during any extension or continuation of the pawn transaction.

(3)(A) ~~Unless otherwise agreed, a~~ A pawnbroker has upon default the right to take possession of the motor vehicle that is the subject of a motor vehicle title pawn agreement. At least ten days prior to repossession, the pawnbroker shall send written notice to the pledgor by certified mail or statutory overnight delivery, return receipt requested, indicating that repossession may occur. The notice shall be sent to the address provided to the pawnbroker by the pledgor at the time the motor vehicle title pawn agreement was executed or the last address thereafter provided to the pawnbroker by the pledgor in writing. The pledgor shall be advised to remove all of his or her personal property from the vehicle before the repossession occurs. The pawnbroker need only send one such notice during the life of the title pawn transaction and any extensions thereof notwithstanding subsequent defaults. In taking possession, the pawnbroker or ~~his~~ the pawnbroker's agent may proceed without judicial process if this can be done without breach of the peace or may proceed by action.

(B) Notwithstanding any other law to the contrary, including but not limited to Code Section 44-14-403, if a pawnbroker obtains possession of a motor vehicle as permitted in subparagraph (A) of this paragraph, the pawnbroker shall send a notice to the pledgor by certified mail or statutory overnight delivery, return receipt requested, informing the pledgor that the pledgor has 20 days from the date of such notice to redeem the motor vehicle by paying to the pawnbroker all amounts owed. The amounts owed shall be disclosed to the pledgor and shall be calculated pursuant to the provisions of this

1 subsection. During this 20 day period, the pledgor shall have the right to redeem the  
2 motor vehicle and certificate of title by paying to the pawnbroker the unpaid principal  
3 amount of the pawn, the unpaid interest, and pawnshop charges calculated at the rates  
4 charged by the pawnbroker in accordance with subparagraphs (A) and (B) of  
5 paragraph (4) of this subsection for each 30 day period from the date of the title pawn  
6 agreement through the date of repossession, plus the repossession and storage expenses  
7 permitted pursuant to subparagraph (C) of paragraph (4) of this subsection.

8 (C) In the event the pledgor does not redeem the motor vehicle within the 20 day  
9 redemption period required by subparagraph (B) of this paragraph, the pawnbroker shall  
10 sell the motor vehicle. The pawnbroker must sell the motor vehicle in a commercially  
11 reasonable manner within 60 days of the expiration of the 20 day redemption period.  
12 Any amount received from such sale in excess of the unpaid principal amount of the  
13 pawn, the unpaid interest and pawnshop charges calculated pursuant to subparagraph  
14 (B) of this paragraph, plus the repossession and storage expenses actually and  
15 reasonable incurred by the pawnbroker, shall be returned to the pledgor within 15 days.  
16 For the purposes of this subsection, a sale is made in a commercially reasonable manner  
17 if the sale is made at any generally known motor vehicle auction or otherwise in  
18 conformity with reasonable commercial practices among dealers in used motor vehicles.

19 (4)(A) During the first 90 days of any pawn transaction or extension or continuation  
20 of the pawn transaction, a pawnbroker may charge for each 30 day period interest and  
21 pawnshop charges which together equal no more than 25 percent of the principal  
22 amount advanced, with a minimum charge of up to \$10.00 per 30 day period.

23 (B) On any pawn transaction which is continued or extended beyond 90 days, a  
24 pawnbroker may charge for each 30 day period interest and pawnshop charges which  
25 together equal no more than 12.5 percent of the principal amount advanced, with a  
26 minimum charge of up to \$5.00 per 30 day period.

27 (C) Notwithstanding any provision of this part to the contrary, prior to the  
28 commencement of the fourth extension or continuation of a motor vehicle title pawn  
29 agreement and prior to the commencement of each successive extension or continuation  
30 thereafter, the pledgor shall be required to make a payment of at least 5 percent of the  
31 original principal amount of the title pawn transaction in addition to the earned interest  
32 and pawnshop charges authorized by this part. Interest and pawnshop charges  
33 authorized by this part at each successive extension or continuation shall be calculated  
34 on the outstanding principal balance. If at the commencement of any extension or  
35 continuation requiring a principal reduction the pledgor has not made previous principal  
36 reductions adequate to satisfy the current required principal reduction, and the pledgor

1 does not repay at least 5 percent of the original principal balance as well as any  
2 outstanding interest and pawnshop charges, the pawnbroker may either, at its option,  
3 decline to further extend or continue the pawn transaction and declare that the current  
4 maturity date is the final maturity date or defer any required principal payment until a  
5 future payment date. No further interest or pawnshop charges may accrue on any such  
6 principal amount so deferred.

7 ~~(C)~~(D) In addition to the charges provided for in subparagraphs (A) and (B) of this  
8 paragraph, in a pawn transaction or in any extension or continuation of a pawn  
9 transaction involving a motor vehicle or a motor vehicle certificate of title, a  
10 pawnbroker may charge the following:

11 (i) A fee equal to no more than any fee imposed by the appropriate state to register  
12 a lien upon a motor vehicle title, but only if the pawnbroker actually registers such a  
13 lien;

14 (ii) No more than \$5.00 per day in storage fees, but only if an actual repossession  
15 pursuant to a default takes place on a vehicle which was not already in the  
16 pawnbroker's possession and only for each day the pawnbroker must actually retain  
17 possession of the motor vehicle; and

18 (iii) A repossession fee of \$50.00 within 50 miles of the office where the pawn  
19 originated, \$100.00 within 51 to 100 miles, \$150.00 within 101 to 300 miles and a fee  
20 of \$250.00 beyond 300 miles, but only if an actual repossession pursuant to a default  
21 takes place on a vehicle which was not already in the pawnbroker's possession.

22 ~~(D)~~(E) If a pledgor or seller requests that the pawnbroker mail or ship the pledged item  
23 to the pledgor or seller, a pawnbroker may charge a fee for the actual shipping and  
24 mailing costs, plus a handling fee equal to not more than 50 percent of the actual  
25 shipping and mailing costs.

26 ~~(E)~~(F) In the event the pledgor or seller has lost or destroyed the original pawn ticket,  
27 a pawnbroker may, at the time of redemption, charge a fee equal to not more than  
28 \$2.00.

29 (5) No other charge or fee of any kind by whatever name denominated, including but not  
30 limited to any other storage fee for a motor vehicle, or any prepayment penalty, shall be  
31 made by a pawnbroker except as set out in paragraph (4) of this subsection.

32 (6) No fee or charge provided for in this Code section may be imposed unless a  
33 disclosure regarding that fee or charge has been properly made as provided for in Code  
34 Section 44-12-138.

(7)(A) Any interest, fees, or charges collected which are undisclosed, improperly disclosed, or in excess of that allowed by this subsection may be recovered by the pledgor or seller in an action at law in any superior court of appropriate jurisdiction.

(B) In any such action in which the pledgor or seller prevails, the court shall also award reasonable attorneys' fees, court costs, and any expenses of litigation to the pledgor or seller.

(C) Before filing an action under this Code section, the pledgor or seller shall provide the pawnbroker with a written notice by certified mail or statutory overnight delivery, return receipt requested, that such an action is contemplated, identifying any fees or charges which the pledgor or seller contends are undisclosed, improperly disclosed, or in excess of the fees and charges allowed by this Code section. If the court finds that during the 30 days following receipt of this notice the pawnbroker made a good faith offer to return any excess, undisclosed, or improperly disclosed charges, the court shall award reasonable attorneys' fees, court costs, and expenses of litigation to the pawnbroker.

(D) No action shall be brought under this Code section more than two years after the pledgor or seller knew or should have known of the excess, undisclosed, or improperly disclosed charges.

(b) Any interest, charge, or fees contracted for or received, directly or indirectly, in excess of the amounts permitted under subsection (a) of this Code section shall be uncollectable and the pawn transaction shall be void. All interest and the pawnshop charge allowed under subsection (a) of this Code section shall be deemed earned, due, and owing as of the date of the pawn transaction and a like sum shall be deemed earned, due, and owing on the same day of the succeeding month.

(c) A pledgor has the right to cancel the pledgor's obligation to make payments under a motor vehicle title pawn agreement until the close of the next business day immediately following the day the pledgor signs a motor vehicle title pawn agreement if the pledgor returns the original check or cash to the location where the pawn was originated. For the purpose of this subsection, the term 'business day' means any day that the title pawn office is open for business."

#### SECTION 4.

Said part is further amended by striking Code Section 44-12-133, relating to manner of keeping and inspection of permanent records of pawnbrokers, in its entirety and inserting in its place the following:

"44-12-133.

1 Entries shall appear in ink and shall be in chronological order. No blank lines may be left  
2 between entries. No obliterations, alterations, or erasures may be made. Corrections shall  
3 be made by drawing a line of ink through the entry without destroying its legibility. The  
4 book shall be open to the inspection of any duly authorized law enforcement officer,  
5 including a representative from the Governor's Office of Consumer Affairs, during the  
6 ordinary hours of business or at any reasonable time."

## 7 SECTION 5.

8 Said part is further amended in Code Section 44-12-138, relating to restrictions on  
9 advertising and required disclosures on pawn tickets, by substituting "(d)" for "(c)" in the  
10 introductory language of subsection (b); by redesignating existing subsections (c), (d), and  
11 (e) as subsections (d), (e), and (f), respectively; and by adding a new subsection (c) to read  
12 as follows:

13 "(c) In addition to the information required by subsection (b) of this Code section, a  
14 pawnbroker shall include the following additional disclosures on any motor vehicle title  
15 pawn agreement:

16 (1) A statement that this pawn transaction is not intended to meet long-term financial  
17 needs;

18 (2) A statement that this pawn transaction should only be used to meet short-term cash  
19 needs;

20 (3) A statement that the borrower will be required to pay additional interest and fees if  
21 he or she renews this pawn transaction rather than pay the pawn in full when due;

22 (4) A statement that the borrower is placing at great risk his or her continued ownership  
23 of the personal property that he or she is pledging for this pawn transaction, including his  
24 or her motor vehicle if that is the property being pledged;

25 (5) A statement that this is a higher interest transaction and that the pledgor should  
26 consider what other lower cost options he or she may have;

27 (6) A statement that if the pledgor fails to repay the full amount of the pawn transaction  
28 on or before the end of the maturity date or renewal of the pawn transaction the  
29 pawnbroker may take possession of the property pledged and sell the property in the  
30 manner provided by law;

31 (7) A statement that a pledgor has a right of rescission. Rescission means that a pledgor  
32 may cancel his or her contract at no cost by returning the borrowed money by the end of  
33 the business day immediately following the date of the pawn transaction. For the  
34 purposes of this paragraph, the term 'business day' means any day the pawnbroker is open  
35 for business;

(8) A statement that if the pledgor loses his or her copy of the title pawn agreement, he or she should immediately advise the pawnbroker in writing; and

(9) A statement that complaints about the pawnbroker's actions can be made to the Governor's Office of Consumer Affairs."

#### **SECTION 6.**

Said part is further amended by adding a new Code Section 44-12-139 immediately following Code Section 44-12-138, relating to restrictions on advertising and required disclosures on pawn tickets, to read as follows:

"44-12-139.

In a motor vehicle title pawn transaction under this part involving a member of the United States military or his or her spouse, the pawnbroker:

(1) Shall not contact the commanding officer of the military member or anyone in the military member's chain of command in an effort to collect on a title pawn made by the military member or his or her spouse;

(2) Shall be bound by the terms of any repayment agreement that the pawnbroker negotiates through military or third-party counselors; and

(3) Shall cease the accrual of interest and pawnshop charges on the pledgor's pawn transaction when the member of the military has been deployed to a combat or a combat support post, or when a member of the reserves component of the armed forces or National Guard has been called to active duty, provided such pledgor provides the pawnbroker with proper documentary evidence of such deployment or status. The cessation of interest and pawnshop charges shall continue for the duration of the deployment or active duty status. During such period, the pawnbroker may not withhold additional extension periods to the military pledgor and may not seek possession of the pledgor's motor vehicle provided the military pledgor makes equal monthly payments sufficient to repay the remaining principal within four months. The benefit provided by this paragraph shall not apply if the member of the military had received orders regarding his or her combat deployment or active duty status prior to taking out the motor vehicle title pawn."

#### **SECTION 7.**

In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared or adjudged invalid or unconstitutional, such adjudication shall in no manner affect the other sections, subsections, sentences, clauses, or phrases of this Act, which shall remain of full force and effect as if the section, subsection, sentence, clause, or phrase so declared or

1 adjudged invalid or unconstitutional were not originally a part hereof. The General  
2 Assembly declares that it would have passed the remaining parts of this Act if it had known  
3 that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

4 **SECTION 8.**

5 This Act shall become effective on July 1, 2006.

6 **SECTION 9.**

7 All laws and parts of laws in conflict with this Act are repealed.